IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

WAGNER ELECTRIC MANUFACTURING COMPANY, a Corporation,
Appellant,
v.
LAMAR LYNDON and CHARLES E. MOHRSTADT, Sheriff of the City of St. Louis,
Appellees.
No. 738.

APPELLANT'S BRIEF ON MOTION TO DISMISS.

CHARLES A. HOUTS,
ALBERT BLAIR,
Attorneys for Appellant.

St. Louis Law Printing Co., 415 N. Eighth St. Main 1819, Central 819.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

WAGNER ELECTRIC MANUFACTURING COMPANY, a Corporation, Appellant, v. LAMAR LYNDON and CHARLES E. MOHRSTADT, Sheriff of the City of St. Louis, Appellees.	No. 738.

APPELLANT'S BRIEF ON MOTION TO DISMISS.

Appellant filed this suit in the District Court for the Eastern Division of the Eastern District of Missouri. It sought, by its petition, to have a resulting trust declared with respect to the sum of fifteen thousand fifteen and 29/100 ($15,015.29) dollars, then in

the hands of appellee Mohrstadt, Sheriff of the City of St. Louis. This fund came into the Sheriff's hands through the levy of an execution under a judgment in favor of appellee Lyndon and against the appellant Wagner Electric Manufacturing Company, which judgment appellant claims to be void because rendered in violation of the due process and equal protection guarantees of the Fourteenth Amendment to the Constitution of the United States.

The appellant, Wagner Electric Manufacturing Company is, and at the time of the institution of the suit was, a citizen of the State of Missouri and a resident of the Eastern Division of the Eastern District of Missouri. Appellee Lyndon was, at the institution of the suit, a citizen of the State of New York. Appellee Mohrstadt, Sheriff of the City of St. Louis, Missouri, was at the time a citizen of the State of Missouri; but, as Mohrstadt was a mere custodian of the fund, claiming no interest in it and no relief with respect to the fund was asked against him, he was a merely formal party, made so for convenience, and his citizenship should be disregarded (Foster's Federal Practice [6th Ed.], Section 42).

Jurisdiction of the District Court was invoked, therefore, on two grounds:

First. On diversity of citizenship existing between the real parties to the controversy; and,

Second. On the ground that a federal question was raised by appellant's claim that the judg-

ment which had been rendered against it by the state court was void, because procured in violation of the due process and equal protection guarantees of the Fourteenth Amendment to the Constitution of the United States.

Following the institution of the suit in the District Court, a motion was there made to dismiss the bill for want of equity and failure to state any ground for the relief prayed for. This motion was sustained. Appellant then prosecuted its appeal to the Circuit Court of Appeals for the Eighth Circuit, where the judgment of dismissal was affirmed. Thereupon, appellant prosecuted this appeal to this Court. It had a right to do so, because the jurisdiction of the District Court did not depend alone upon the diversity of citizenship. The petition also invoked the application and construction of the Constitution of the United States, and in such cases the judgment of the Circuit Court of Appeals is not final, and an appeal may be prosecuted from its judgment to this Court.

Huguley Mfg. Co. v. Galeton Cotton Mills, 184 U. S. 290;
American Sugar Refining Co. v. New Orleans, 181 U. S. 277;
Loeb v. Columbia Twp. Co., 179 U. S. 472.

The motion to dismiss does not challenge the jurisdiction of this Court, but seeks a dismissal upon two grounds, viz.: First, that no federal question

is involved, and second, that the questions presented are frivolous.

In order that your Honors may understand the questions presented by this appeal, it is necessary to briefly state the facts disclosed by the petition filed in the District Court. They are these: Lyndon was the owner of certain letters patent for recharging the storage batteries of automobiles. In the year 1912 he entered into a contract with the Wagner Electric Manufacturing Company, by which the Wagner Company was granted the optional right, either to purchase the patent or to operate under an exclusive license. The contract provided that if the Wagner Company elected to operate under an exclusive license, it should pay a minimum royalty of Three Thousand Dollars a year. Such was the contract, and there has never been any dispute between the parties as to such being the contract between them. In the year 1917 Lyndon filed a suit in the Circuit Court of the City of St. Louis, in which he alleged the contract to be as herein stated, and as a basis for a recovery of approximately four years minimum royalty, he alleged that the Wagner Company had, under the contract, as it had a right to do, elected to avail itself of the privilege of operating under the exclusive license. By an appropriate answer, the Wagner Company denied that it had elected to operate under the exclusive license. The question,

whether the Wagner Company had exercised its right of election, became the sole question in the case. When the case came on for trial no evidence whatever was produced to show that the Wagner Company had elected to operate under a license. The Wagner Company sought by appropriate requests to have the Court and jury decide the one question thus presented by the petition and answer, **but this the Court refused to permit to be done.** It expressly refused to allow that question to be decided, although it was perfectly apparent from the contract and from Lyndon's petition that no liability could be imposed upon the Wagner Company until it should be made to appear that the Wagner Company had exercised its right of election, and had elected to operate under a license. **The question thus presented for decision by the Circuit Court of the City of St. Louis was never decided.** On the contrary, as stated, the Court refused to permit that question to be decided; and without deciding it, the Court directed a verdict for the full amount sued for with interest.

Upon appeal to the Supreme Court of Missouri appellant urged upon that Court the same proposition which it is now urging upon this Court, and yet the Supreme Court of Missouri, with an opinion, written by a judge who was not present at the oral argument, affirmed the judgment of the lower court without once mentioning the proposition which we have

at all stages asserted, to demonstrate the invalidity of the judgment of the lower court. (See opinion in Lyndon v. Wagner Electric Manufacturing Co., 285 Mo. 77.)

From the foregoing your Honors will perceive that the federal question presented on this appeal is not such as is described in appellees' motion to dismiss. The motion to dismiss would indicate that appellant claims that a mere denial of trial by jury is a violation of the due process clause of the Constitution. We have made no such limited claim. **We claim that it is beyond the power of any court to direct a judgment without deciding the questions, or some of them, presented by the pleadings in the case in which the judgment is entered.** We claim that no court has the power to enter a judgment without first determining the fact or facts upon which the rendition of such judgment must depend. We claim if such a judgment is entered, without a judicial determination of the facts upon which such judgment must depend, the enforcement of such judgment is a taking of property without due process of law.

We concede, that if a court decides **ERRONEOUSLY** the questions presented, the erroneous judgment would not be obnoxious to the due process clause of the Constitution. This would be so whether the erroneous judgment was erroneous as to the facts

or as to the law. But, where a court, with its eyes wide open, and with a clear purpose and design, refuses to decide the question presented by the pleadings, upon the decision of which alone liability must depend, and enters a judgment nevertheless, its action in so doing is beyond its power, is arbitrary, oppressive and violative of the due process clause of the Constitution of the United States. Such is the case presented here.

The application of the principles which we are invoking is illustrated by the case of Fayerweather v. Rich, 195 U. S. 276, in which this Court said:

> "Our jurisdiction of this direct appeal from the decision of the Circuit Court is invoked on the ground that the case involves the application of the Constitution of the United States.
>
> "The contention is that, by Article V of the Amendments to the Federal Constitution, no person can 'be deprived of life, liberty or property without due process of law'; that these plaintiffs were entitled to large shares of the estate of Daniel B. Fayerweather; that they were deprived of this property by the judgment of the Circuit Court, which gave unwarranted effect to a judgment of the state courts; that this action of the Circuit Court is not to be considered a mere error in the progress of a trial; but a deprivation of property under the forms of legal procedure. In Chicago, B. & Q. R. Co. v. Chicago, 166 U. S. 226, 51 L. Ed. 979, 17 Sup. Ct. Rep. 581, we held that a judgment of a state court might be here reviewed if it operated to deprive a party of his

property without due process of law, and that the fact that the parties were properly brought into court and admitted to make defense was not absolutely conclusive upon the question of due process. We said, p. 234 L. Ed., p. 983, Sup. Ct. Rep., p. 584:

> "'But a state may not, by any of its agencies, disregard the prohibitions of the Fourteenth Amendment. Its judicial authorities may keep within the letter of the statute prescribing forms of procedure in the courts and give the parties interested the fullest opportunity to be heard, and yet it might be that its final action would be inconsistent with that amendment. In determining what is due process of law, regard must be had to substance, not to form. This Court, referring to the Fourteenth Amendment, has said: "Can a state make anything due process of law, which by its own legislation, it chooses to declare such? To affirm this is to hold that the prohibition to the states is of no avail, or has no application where the invasion of private rights is effected under the forms of state legislation"' (Davidson v. New Orleans, 96 U. S. 97, 102, 24 L. Ed. 616, 618).

"The * * * same question could be propounded and the same answer should be made, in reference to judicial proceedings inconsistent with the requirement of due process of law. If compensation for private property taken for public use is an essential element of due process of law as ordained by the Fourteenth Amendment, then the final judgment of a state court, under the au-

thority of which the property is in fact taken, is to be deemed the act of the state within the meaning of that amendment."

And again (p. 236, 237, L. Ed., p. 985, Sup. Ct. Rep., p. 584):

"The mere form of the proceeding instituted against the owner, even if he be admitted to defend, cannot convert the process used into due process of law if the necessary result be to deprive him of his property without compensation."

"If a judgment of a state court can be reviewed by this court on error upon the ground that al though the forms of law were observed, it necessarily operated to wrongfully deprive a party of his property (as indicated by the decision just referred to), a judgment of the Circuit Court of the United States, claimed to give such unwarranted effect to a decision of a state court as to accomplish the same result, may also be considered as presenting the question how far it can be sustained in view of the prohibitory language of the Fifth Amendment, and thus involve the application of the Constitution. It is said that the right of these plaintiffs to share in the estate of Daniel B. Fayerweather is undoubted, unless destroyed by the releases they executed; that the fundamental question presented in the trial court of the state was the validity of those releases; that, notwithstanding this, that court came to its conclusion and rendered its judgment without any determination thereof; that the appellate courts wrongfully assumed that the trial court had decided the question, and rendered their judgments on that as-

sumption, so that the necessary result of the proceedings in the state courts was a deprivation of the right of the plaintiffs to a share of the estate without any finding of the vital fact which alone could destroy their right. The contention is not that the state courts erred in their finding in respect to this fact, but that there never was any finding. Such decision of the state courts, made without any finding of the fundamental fact, was accepted in the Circuit Court of the United States as conclusive determination of the fact. ALTHOUGH THESE PLAINTIFFS WERE PARTIES TO THE PROCEEDINGS IN THE STATE COURTS, AND PRESENTED THEIR CLAIM OF RIGHT, IF IT BE TRUE THAT THE NECESSARY RESULT OF THE COURSE OF PROCEDURE IN THOSE COURTS WAS A DENIAL OF THEIR RIGHTS—A TAKING AWAY AND DEPRIVING THEM OF THEIR PROPERTY WITHOUT ANY JUDICIAL DETERMINATION OF THE FACT UPON WHICH ALONE SUCH DEPRIVATION COULD BE JUSTIFIED—A CASE IS PRESENTED COMING DIRECTLY WITHIN THE DECISION IN 166 U. S. 226, 41 L. Ed. 979, 17 Sup. Ct. Rep. 581. Giving effect in the Circuit Court to the state judgment does not change the character of the question. It is simply adding the force of a new determination to one wrongfully obtained, and adding it upon no new facts. Whether the contention of the plaintiffs in respect to the character of the state proceedings can be sustained or not is a question upon the merits, and does not determine the matter of jurisdiction. That depends upon whether there is presented a bona fide and reasonable question of the wrongful character of the proceedings in the state courts

and the necessary result therefrom. We are of opinion that the jurisdiction of this court must be sustained."

Your Honors will note and appreciate the significance of the conclusion of the Court, quoted above, in the following language:

"Although these plaintiffs were parties to the proceedings in the state courts, and presented their claim of right, if it be true that the necessary result of the course of procedure in those courts was a denial of their rights—a taking away and depriving them of their prpoerty **WITHOUT ANY JUDICIAL DETERMINATION OF THE FACT UPON WHICH ALONE SUCH DEPRIVATION COULD BE JUSTIFIED** —a case is presented coming directly within the decision in 166 U. S. 226."

See, also, Windsor v. McVeigh, 93 U. S. 74.

The principles applied in the foregoing cases are fundamental in the administration of justice. Their application to the case before your Honors will result in relieving the Wagner Company from a judgment as unjust as it is invalid. The Wagner Company today finds itself in this situation: It made a contract by which it undertook to pay certain royalties **IF** it elected to accept a license from Lyndon. No Court has yet decided that it elected to accept such a license. Nevertheless, there has been imposed upon it a judgment for the royalties which it was only liable to pay, if it elected to accept such a license. And, since the judgment complained of was rendered,

another judgment for approximately the same amount has been rendered against it for subsequent royalty installments, which judgment was obtained merely by the application of the rule of res adjudicata. And, so, the Wagner Company finds itself with successive judgments and a continuing liability imposed upon it, by reason of the judgment which is now involved in this case, which judgment we claim is absolutely void, because rendered in violation of the constitutional guarantee.

The motion to dismiss denies that a federal question is involved. It is not pretended that the question presented on this appeal is foreclosed by prior decisions of this Court. As to that ground, therefore, the motion should be overruled.

As to the claim that the questions presented are frivolous, appellant can only say that its persistence, in asserting what it conceives to be its rights, is evidence of its good faith, and it submits to your Honors that it ought not to be denied a hearing upon the merits, where the amount involved is so large, and where the questions involved are so important, because they relate to the administration of justice and the powers of the judiciary as affected by the due process clause of the Constitution.

CHARLES A. HOUTS,
ALBERT BLAIR,
Attorneys for Appellant.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

WAGNER ELECTRIC COMPANY,
Appellant,
vs.
LAMAR LYNDON and CHARLES E. MOHRSTADT, Sheriff of the City of St. Louis,
Respondents.
No. 738.

SEPARATE MOTION TO DISMISS OF CHARLES E. MOHRSTADT, SHERIFF.

CLARENCE T. CASE,
Attorney for said Sheriff.

St. Louis Law Printing Co., 415 N. Eighth St. Main 1819, Central 919.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

WAGNER ELECTRIC COMPANY, Appellant, vs. LAMAR LYNDON and CHARLES E. MOHRSTADT, Sheriff of the City of St. Louis, Respondents.	No. 738.

SEPARATE MOTION TO DISMISS OF CHARLES E. MOHRSTADT, SHERIFF.

Comes now Charles E. Mohrstadt, Sheriff of the City of St. Louis, one of the respondents in the above-entitled cause, and respectfully moves the Court to dismiss the appeal herein, for the reason that, on the face of the record, there is no constitutional question before this Honorable Court for its decision.

Wherefore, the premises considered, this respondent prays that said appeal be dismissed.

CHARLES E. MOHRSTADT,
Sheriff of the City of St. Louis, Missouri.

CLARENCE T. CASE,
Attorney for said Sheriff.